

section 4, to arise out of such employment, is a question that must be carefully considered in the circumstances of each particular case. I think there has been a tendency towards hasty reading and indiscriminating acceptance of precedents in this connection.

I sympathise with the appellant, but the respondents were not insurers under a life policy and sympathy is no ground for the grant of compensation outside the law. I would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *B. Kaher & Kirpal Brar; Shearn, Delamore & Co.*

CHARLIE TAY v. PUBLIC PROSECUTOR; TONG HOE & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Buttrose J.) October 13, 1967]

[Singapore — Magistrates Appeal Nos. 225 & 226 of 1966]

Criminal Law and Procedure — Trial — Consolidation of separate cases — Joint trial court has no jurisdiction — Trial nullity — Convictions and sentences quashed — New trial ordered — Criminal Procedure Code (Cap. 132), ss. 5, 161, 162, 165, 169 & 440.

A simultaneous trial of two cases is a nullity. Where an accused person has pleaded "not guilty" to the offences charged against him, and another accused person has pleaded "not guilty" to the offence or offences charged against him in another separate and independent charge, the issues raised by these two pleas cannot be tried together.

The three appellants were charged with robbery. The first of three appellants was also charged with personating a public servant. As the latter offence was committed at the same time and during the commission of the robbery, the case of robbery against the three appellants was joined with the case of personating a public servant against the 1st appellant and the two cases were jointly tried together in the district court. The three appellants were convicted of robbery and sentenced to one year's imprisonment and the 1st appellant was also convicted of personating a public servant and sentenced to 6 months' imprisonment, the sentences to run concurrently. On appeal:—

Held: the district court in the circumstances had no jurisdiction to try the appellants jointly on these two charges and the trial was a nullity *ab initio*. As this technicality struck at the root of the jurisdiction of the district court to try the appellants, the appeal should be allowed and a new trial ordered.

William Crane's ⁽¹⁾ case followed. *Syed Ismail v. Public Prosecutor* ⁽⁴⁾ disapproved.

Cases referred to:—

- (1) *William Crane* 15 Cr. App. R. 23 and 183 at pp. 198 also 188; [1921] 2 A.C. 299 at p. 321.
- (2) *Albert Michael McDonnell* 20 Cr. App. R. 163.
- (3) *R. v. Dennis* and *R. v. Parker* 27 Cox C.C. 632; [1924] 1 K.B. 867.
- (4) *Syed Ismail v. Public Prosecutor* [1967] 2 M.L.J. 123.

The following cases were also cited in support of the contention that separate cases cannot be consolidated

A into one hearing: *Sandana* A.I.R. 1945 Lah. 286 and 292; *R. v. Assim* [1966] 3 W.L.R. 55; *Osman Mistry v. Abdul Krishnan* A.I.R. 1949 Cal. 632; *Najendra Nath* A.I.R. 1955 Cal. 555; *Champah Lal* A.I.R. 1941 Bom. 156.

MAGISTRATES' CRIMINAL APPEAL.

Freddy Yin for the 1st appellant.

B *Dato' David Marshall* for the 2nd and 3rd appellants.

Buttrose J.: The three appellants were convicted of robbery by the Criminal District Court and sentenced to 1 year's imprisonment.

C The 1st appellant was also convicted of personating a public servant by the same court and sentenced to 6 months' imprisonment to run concurrently with the sentence of 1 year on the robbery charge.

D This latter offence was committed at the same time and during the commission of the first offence of robbery.

E The case was devoid of all merit on the facts but it so happened that the charge of personating a public servant against the 1st appellant was made the subject of an entirely independent and separate charge on a separate charge sheet or as would be said in England of another indictment.

F The case of robbery against the three appellants was joined with the case of personating a public servant against the 1st appellant and the two cases were then jointly tried together. There was thus under the phraseology used under English law two indictments, one against the three appellants for robbery and one against the 1st appellant for personation of a public servant.

G No one seems to have been aware of this and the case proceeded as if there had been two counts in the one charge and there was a joint trial of both cases.

Section 161 of the Criminal Procedure Code (Cap. 132) provides that there shall be separate charges for distinct offences and every such charge shall be tried separately except as provided in sections 162, 163, 165 and 169.

H Sections 162, 163 and 165 make provisions for the joinder of charges and section 169 gives power to join persons. There appears to be no power to join cases or indictments.

I By virtue of the provisions of section 5 of the Criminal Procedure Code recourse must therefore be had to the law in force in England the application of which is mandatory.

The English authorities make it clear that that a simultaneous trial of two indictments or as here two cases is a nullity. See *William Crane*, ⁽¹⁾ *Albert Michael McDonnell*, ⁽²⁾ *R. v. Dennis* ⁽³⁾ and *R. v. Parker*. ⁽³⁾ Where an accused person has pleaded 'not guilty' to the

offences charged against him in an indictment or charge and another accused person has pleaded 'not guilty' to the offence or offences charged against him in another separate and independent indictment or charge it is elementary criminal law that the issues raised by these two pleas cannot be tried together. See *per* Lord Atkinson in *Crane's* case.

It was conceded as I understood it by the Deputy Public Prosecutor that the trial was bad but it was argued that it was but a mere irregularity which could be cured by the application of the provisions of section 440 of the Criminal Procedure Code.

It was not disputed that the procedure adopted here did not result in any miscarriage of justice but in the view I take it struck at the root of the jurisdiction of the court to try the appellants.

The district court in the circumstances had no jurisdiction to try the appellants jointly on these two charges or indictments and the trial was a nullity *ab initio*. It only remains for me to say how much I regret coming to this decision as the point is a pure technicality and as I have said there is no merit in this appeal on the facts.

In arriving at this conclusion I am aware that I have the misfortune to find myself in disagreement with the decision of Raja Azlan Shah J. in *Syed Ismail v. Public Prosecutor* ⁽⁴⁾ to which my attention was drawn.

The appeal must accordingly be allowed and the convictions and sentences quashed and I direct that there shall be a new trial.

Appeal allowed.

New trial ordered.

Solicitors: *Yin Ee Kheng; David Marshall.*

YEO GOON NYOH & ANOR. v. OCEAN STEAMSHIP CO. LTD.

[O.C.J. (Buttrose J.) October 13, 1967]

[Singapore — Suit No. 764 of 1966]

Shipping — Bill of Lading — Carriage of Goods — Goods damaged by sea water — Claim for damages — Proof — Liability — Carriage of Goods by Sea Act, 1924, Schedule, art. III r. 2.

Under a bill of lading dated August 18, 1965 three cases of pistons belonging to the plaintiffs were shipped at Liverpool in apparent good order and condition on board the defendant's vessel "Clytoneus" for carriage to and delivery at Singapore. The vessel arrived in Singapore on September 12, 1965 and the three cases of pistons were discharged into godowns on September 13 and 14, 1965. The plaintiffs took delivery of the cases on September 17, 1965 and it was found that the contents of one of the cases was wet and the pistons were rusted. The contents of the remaining two cases were not damaged in any way. The plaintiffs sued the defendant claiming damages for breach of contract or duty

A and/or for negligence in and about the carriage of the plaintiffs goods on the defendant's vessel. The defendant denied any breach of duty or reasonable care on their part in the loading or carriage of the plaintiffs' goods by allowing the goods to come in contact with sea water. The defendant maintained that the plaintiffs must prove not only damage to the goods but that the damage was caused by sea water as specifically pleaded in the statement of claim. It was not in dispute that the goods were damaged. It was also not in dispute that they were shipped in apparent good order and condition.

B Held: (1) the only reasonable inference to be drawn from the evidence in this case was that the goods were damaged after shipment and before discharge. Further on the probabilities of the matter the goods were damaged by sea water as alleged;

C (2) all the plaintiffs need prove was damage and it was not fatal to their case if the damage was caused other than by sea water;

D (3) as the plaintiffs had shown that the goods were shipped in good order and condition and were found on discharge to be damaged the burden of proof thus shifted to the defendant to show that it was not responsible for the damage and this it had failed to do. There should therefore be judgment for the plaintiffs with costs.

Cases referred to:—

(1) *Gosse Millard v. Canadian Government Merchant Marine Ltd.* [1927] 2 K.K. 432.

(2) *Albacora S.R.L. v. Westcott & Laurence Line, Ltd.* [1965] 2 Ll.L.R. 37.

CIVIL SUIT.

Lee Boon Siong for the plaintiffs.

M. Karthigesu for the defendant.

Cur. Adv. Vult.

F Buttrose J.: The plaintiffs in this action claimed from the defendant damages for breach of contract or duty and/or for negligence in and about the carriage of three cases of pistons on board the defendant company's vessel 'Clytoneus'.

G Under a bill of lading dated the 18th August, 1965, there were shipped at Liverpool in apparent good order and condition on board the 'Clytoneus' three cases of pistons for carriage to and delivery at Singapore.

H The plaintiffs were at all material times the owners of the goods comprised in the three cases or the indorsees of the bill of lading to whom the property in the goods passed upon or by reason of the indorsement, alternatively, the plaintiffs presented the bill of lading at Singapore and took delivery thereunder.

I On the 12th September, 1965, the vessel arrived at Singapore and the three cases of pistons were discharged into godowns 1 and 2 on the 13th and 14th September, 1965. The plaintiffs took delivery of the goods on the 17th September, 1965. On the morning of the 18th September, 1965 one of the cases was opened and it was found that the contents were wet and the pistons